

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

NOTICE OF MOTION NO. 510 OF 2003

IN

SUIT NO.516 OF 2003

Trident Rubber (P) Ltd .. Plaintiff

versus

1. Maharaashtra State Road Trans. .. Defendants

Corpn. & anr ...

Mr. J.P.Sen i/b Ms Ratna Bhargavan for Plaintiff.

Mr.G.S.Hegde with Mr C.M.Lokesh i/b Hegde

& Associates for Defendant nos. 1 and 2.

CORAM : D.G. KARNIK, J

DATED : 4th February, 2005.

P.C:-

1. Heard learned counsel for the parties. This suit is interalia for the reliefs of restraining the defendants from encashing the two bank guarantees and also for the recovery of the money which is allegedly due to the plaintiff. Ad interim relief of injunction

is sought in this motion. The facts necessary for the decision of this motion are briefly stated below :

2. The plaintiff had entered into a rate contract No. 189 of 1998/99 with the defendant no.1 for supply of precured tread rubber (for short " the goods"). For the fulfillment of the said contract the plaintiff had given the bank guarantee of Rs.5,00,000/- to the defendant no.1. According to the defendant no.1 the plaintiff committed breach of the said contract entitling the defendant no.1 to invoke the bank guarantee. The bank guarantee was invoked by the defendants on two letters dated 21st December, 2000 and 31st May, 2001. The bank declined to make the payment under the said bank guarantee on the ground that the bank guarantees were invoked after the period specified in the bank guarantee. The defendant no.1 was therefore unable to encash the said bank guarantee. Thereafter the defendant no.1 made a representation to the plaintiff that it wanted to award a fresh rate contract for supply of the goods for the period from 4th October, 2002 to 3rd October, 2003 (for short 2002-03) for which the plaintiff should procure two fresh bank guarantees. Accordingly, the plaintiff gave two fresh bank

guarantees regarding the supplies to be made under the rate contract for the year 2002-03. However, in pursuance of the said rate contract for the year 2002-03 no further orders were placed by the defendant no.1. This fact is not disputed by the defendant no.1. As there were no supplies made in pursuance of the rate contract for the year 2002-03 there is no question of a breach by the plaintiff of the said rate contract for the year 2002-03. However, the defendant no.1 fraudulently and with a view to recover the alleged claims in respect of the rate contract for the year 1999-2000 sought to invoke the two bank guarantees given by the plaintiff for the year 2002-03.

3. I am prima facie satisfied that there are sufficient averments of fraudulent attempt of encashing the bank guarantees issued for the supplies to be made in the year 2002-03 in respect of the earlier supplies made in the year 1999-2000.

4. The two bank guarantees specify that the bank shall pay to the defendants the sum mentioned in the guarantees for non-fulfillment of any of the terms of the contract i.e. the rate contract for the year

2002-03. Thus the bank guarantees were not unconditional as held by the Supreme Court in para 14 of its decision in Hindusthan Construction vs State of Bihar reported in (1999) 8 SCC 436 relied upon by the plaintiff. The bank guarantees were to be encashed only for the breach of the rate contract for the year 2002-03 and not for the alleged breach of rate contract of the year 1999-2000. The bank guarantees are sought to be encashed for the alleged breach in the year 1999-2000. The plaintiff is therefore entitled to an injunction.

5. This court (Coram: R.J.Kochar,J) vide an order dated 14th February, 2003 had granted ad interim relief. I see no reason to vary the said order pending decision of the suit. Hence, motion is allowed. Interim order passed on 14th February, 2003 is confirmed till decision of the suit.

D.G.KARNIK, J